

**STATE OF VERMONT  
AGENCY OF HUMAN SERVICES  
DEPARTMENT OF CORRECTIONS**

**Directive: 254.03**

**Subject:** Substance Abuse Treatment Services Confidentiality And Ethics

**Effective Date:** January 16, 1998 **Review and Re-Issue Date:**

**Supersedes:** NEW **APA Rule Number:**

<b>Recommended for approval by:</b>		<b>Authorized By:</b>	
Signature	Date	Signature	Date

**1. Authority:**

- 1.1** Pursuant to Title 3, V.S.A., Section 3052, and Title 28, V.S.A., Chapters 1,5,9 and 11, the Commissioner of the Department of Corrections shall determine, establish and administer the policies for the Vermont Department of Corrections.

**2. Purpose:**

- 2.1** The purpose of this directive is to provide guidance to all Department of Corrections' staff who are providing substance abuse treatment and supervision services as to the nature of that role and the legal and ethical standards to be met in the execution of those treatment duties.
- 2.2** The Intensive Substance Abuse Program (ISAP) is delivered as part of an Intermediate Sanctions sentencing option. Its purpose is to reduce crime. This is done by addressing the offender's substance abuse which is associated with his/her criminal behavior. Treatment groups are co-facilitated by credentialed counselors, either Correctional staff or contracted, and Correctional Services Specialists. Treatment Teams, consisting of providers, CSSs, CO IIs and volunteers, manage the program operation and oversee each client's participation in treatment.

**3. Applicability/Accessibility**

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- 3.1** All individuals and groups affected by the operations of the Department of Corrections. Anyone may have a copy of this directive.

### **4. Directive**

#### **4.1 The Role of the Correctional Services Specialist in Substance Abuse Treatment**

##### **4.1.1 Nature of the Assignment**

**4.1.1.1** The CSS may provide or assist in providing substance abuse treatment. Whether acting as a treatment provider or as a member of the treatment team, they are bound by the same rules of confidentiality as all other substance abuse treatment providers, which are contained in 42 C.F.R., Part 2. In fact, all members of the treatment team are also bound to adhere to the Federal confidentiality rules as well as State statute and Department regulations. Information gained in treatment groups may be shared with the treatment team; but may not be re-disclosed outside of the treatment team unless: (I) there is a legal obligation to report such as in the cases of child abuse, elder abuse or a specific threat of harm; or (2) a properly executed release of information form has been signed by the client. The treatment team may take actions that it deems appropriate to support the client's treatment including an increase in supportive supervision visits.

**4.1.1.2** It may change the treatment regimen in keeping with the client's performance or it may terminate treatment if the client demonstrates an unwillingness to follow the treatment plan or the conditions of his/her status in the program.

##### **4.1.2 Ethics**

**4.1.2.1** Corrections' staff working in a treatment capacity and who are either certified or seeking certification as an alcohol and drug counselor are bound by the Code of Ethics promulgated by the National Association of Alcohol and Drug Abuse Counselors. Other individuals involved with substance abuse treatment are to use the NADAAC Code of Ethics as an ethical guide. .

##### **4.1.3 Confidentiality**

**4.1.3.1** In 1992, the Congress consolidated the Alcohol and Drug confidentiality laws into a single statute: 42 C.F.R., Section 290dd-2. They are found in 42 C.F.R., Part 2.

## **4.2 Purpose of the Law**

- 4.2.1** The purpose of the law was to confirm the public health approach to alcohol and drug abuse. People with drug or alcohol problems would be more likely to seek or accept treatment if they knew that their substance abuse problem, which carries a daunting stigma, would not be revealed to others. In addition, patients would be more likely to succeed in treatment if they could trust their counselors and programs not to reveal stigmatizing information about them.
- 4.2.2** Congress designed the laws to impose restrictions on both the disclosure and the use of information about individuals receiving services from any federally assisted drug or alcohol programs. Some restrictions limit or prohibit the disclosure of information by programs. Others limit the re-disclosure of information by anyone who receives it from a program. In addition, others limit the use of information by anyone who receives it from a program.
- 4.2.3** The purpose 'is not to shield individuals from responsibility for their actions or to isolate drug and alcohol programs from the rest of the world. Confidentiality protection is not absolute; the laws and regulations provide many ways for programs to communicate information lawfully. Criminal prosecutions and reports of child abuse or neglect, for instance, may still proceed under proper circumstances and according to certain procedures. Many disclosures in the public interest may be made under the proper circumstances and according to the procedures sanctioned by the regulations.

## **4.3 Scope of the Law**

- 4.3.1** The law applies to Holders of Information who are alcohol and drug programs as well as researchers, auditors and others. Their duties include the following:
  - 4.3.1.1** To protect the confidentiality of the identities of patients.
  - 4.3.1.2** Not to reveal information about patients unless authorized by the regulations.
  - 4.3.1.3** To disclose information under certain circumstances, but only after following procedures set out in the regulations.

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- 4.3.2** Those who receive information from programs, with the patient's consent or for other reasons, often may not pass it on without further authorization and sometimes may not use the information for certain purposes.
- 4.3.3** Those who seek the information must follow the prescribed procedures to obtain it and may not compel a program to provide information in violation of the law and regulations.
- 4.3.4** Violation of the confidentiality regulations is a criminal offense. When there is a conflict, the federal law establishes minimum protection for information about people who seek or receive drug or alcohol services, protection that state law may not abrogate. In any unavoidable conflict, the federal law controls.

### **4.4 General Rule**

- 4.4.1** A program may not disclose any information that would identify a patient as an alcohol or drug abuser. Not only programs are covered but also individuals working in them such as paid full-time employees, volunteers, student interns, former staff members, as well as administrative, executive and support staff. Clinicians are also covered. In correctional settings, all individuals involved in the treatment program as well as individuals in each of those capacities that may see or hear people or identifying information who are not part of the treatment program must be informed about the provisions of 42 C.F.R., Part 2.
- 4.4.2** The rule is not absolute in that there are ten (10) exceptions to permit necessary communications.

### **4.5 Exceptions to the rule for Holders of Information**

- 4.5.1** Internal communications - Information can be disclosed within a program or to an entity having direct administrative control over that program, if the recipient needs the information for duties that arise from the provision of substance abuse services – 42 C.F.R. Section 2.12(c)(3). Communication within a program must be on a need to know basis.
- 4.5.2** Consent - Generally, a program may disclose any information about a patient if the patient specifically authorizes it by signing a valid consent form - 42

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C.F.R., Sections 2.31, 2.33. Consent must be informed. The patient must sign a written release in prescribed form that specifies the following:

**4.5.2.1** The name of the program making the disclosure.

**4.5.2.2** The purpose of the disclosure.

**4.5.2.3** The person or agency to receive the information.

**4.5.2.4** The information to be released (described as exactly as possible and no more than is necessary to fulfill the purpose of the release). .

**4.5.2.5** A statement that the patient understands that he/she may revoke the consent at any time, except the extent that the action has been taken in reliance upon it.

**4.5.2.5.1** A program may take action in reliance upon a consent form by, for example, providing services in reliance on consent to bill a third-party payer.

**4.5.2.5.2** Revocation may be written or oral.

**4.5.2.5.3** Special consent forms for communications with elements of the criminal justice system that refer patients to treatment as a condition of disposition of criminal charges against them may be made irrevocable for a period of time - 42 C.F.R., Section 2.35.

**4.5.2.6** The date or condition upon which the consent expires, if it has not been revoked earlier.

**4.5.2.7** The date the consent form is signed.

**4.5.2.8** The signature of the patient.

**4.5.3** Every time a disclosure is made with a patient's consent, it must be accompanied by a written notice prohibiting re-closure - 42 C.F.R., Section 2.32.

**4.5.4** Restrictions on disclosure apply only to information that would identify a person, directly or indirectly, as a drug or alcohol abuser - 42 C.F.F., Sections 2.11, 2.12(a)(I)(i).

**4.5.5** Other exceptions include:

**4.5.5.1** Crimes on program premises or against program personnel- 42 C.F.R., Section 2.12(c)(5).

- 4.5.5.2** Medical emergencies - 42 C.F.R., Section 2.51.
- 4.5.5.3** Mandated reports of suspected child or elder abuse or neglect - 42 C.F.R. Section 2.12(c)(6).
- 4.5.5.4** Research - Programs may allow access to patient records for scientific research in certain circumstances - 42 C.F.R., Section 2.52.
- 4.5.5.5** Audit and Evaluation - Certain qualified individuals or organizations may have access to program records for audits or evaluations - 42 C.F.R., Section 2.53.
- 4.5.5.6** Court Orders. A federal, state or local court may authorize a program to make a disclosure that would otherwise be prohibited - 42 C.F.R., Sections 2.61-2.67.  
  
Programs may not disclose any alcohol or drug information in response to a subpoena, even those signed by judges - 42 C.F.R., Section 2.61(b)(1). The court must find "good cause" for the disclosure.
- 4.5.5.7** If granted, the court order must limit disclosure to parts of the record essential to fulfill purpose of the order, to persons who need the information, and protect the information from other eyes or ears - 42 C.F.R., Section 2.64(e).
- 4.5.5.8** Procedures in a criminal investigation or prosecution of a patient - 42 C.F.R., Section 2.65. The applicant for the order must use a fictitious name for the patient and notify the program, not the patient. The program must have the opportunity to be represented by counsel. The program must have the opportunity to be represented by independent counsel if the person applying for the order is a law enforcement agent. The program must have independent counsel if the applicant is a law enforcement agent and the program is a government entity. The program must have the opportunity to appear and address the court on whether the criteria for the court ordered disclosure are satisfied.

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**4.5.5.9** If the court order is issued, it must limit the disclosure to necessary parts of the record and limit disclosure and use to law enforcement personnel who need it for prosecution.

### **4.6 Family Participation**

**4.6.1** Family members attending program activities including education and treatment sessions must be informed that they are not to disclose the identity of individuals in treatment.

**4.6.2** Family members will sign a statement assuring that they have been informed about the confidentiality regulations and have agreed not to disclose the identity of program participants.

## **5. Training Method**

**5.1**

## **6. Quality Assurance Processes**

**6.1**

## **7. Financial Impact:**

**7.1**

## **8. References**

Code of Federal Regulations (Part 2)

\*Code of Ethics National Association of Alcohol and Drug Abuse Counselors

\*The Corrections Services Specialist in Substance Abuse Treatment (Powell 11/7/96)

## **9. Responsible Director and Draft Participants**